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7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 LYDIA PACHECO-CESENA,

12 Plaintiff,

13 v.

14 JASON FLETCHER, ANTHONY
MORGAN, SAN LEANDRO POLICE
15 DEPARTMENT, CITY OF SAN
LEANDRO, a Municipal Corporation, and
16 DOES 1 through 100, inclusive,

17 Defendants.
18
19

Case No. C 07 2974 EMC

**COMPLAINT FOR VIOLATION OF
FEDERAL AND CALIFORNIA CIVIL
RIGHTS**

**(42 U.S.C. § 1983)
(Calif. Const., art. I, §§ 13;
Calif. Civil Code §§ 43, 1708)**

20 Plaintiff alleges:

21 **Jurisdiction**

22 1. This is an action brought under 42 U.S.C. § 1983 as well as the Fourth and
23 Fourteenth Amendments of the United States Constitution.

24 2. The jurisdiction of this Court is predicated on 28 U.S.C. §§ 1331 and 1343 (3) and
25 (4).

26 **Venue**

27 3. A substantial part of the events giving rise to this action occurred in San Leandro,
28

Complaint for Violation of Civil Rights

**Pacheco-Cesena vs. City of San Leandro, et al.,
United States District Court
Northern District of California**

1 California. Venue is therefore proper under 28 U.S.C. § 1391(b) .

2 4. Defendants, are, and at all times mentioned in this complaint, were, residents of the
3 County of Alameda, State of California. Venue is also proper under 28 U.S.C. § 1391(b).

4 **The Parties**

5 5. Plaintiff, LYDIA PACHECO-CESENA is, and at all times mentioned in this
6 complaint, was a citizen of the United States, and a resident of Alameda County, California.

7 6. Defendant JASON FLETCHER is, and at all times mentioned in this complaint, was
8 a duly sworn peace officer employed by Defendants SAN LEANDRO POLICE DEPARTMENT and
9 CITY OF SAN LEANDRO as a police officer. This Defendant was, at all times mentioned in this
10 complaint, acting in the course and scope of his employment with the SAN LEANDRO POLICE
11 DEPARTMENT and CITY OF SAN LEANDRO. This Defendant was, at all times mentioned in this
12 complaint, acting under color of state law. This Defendant is sued in his individual capacity as well
13 as his official capacity.

14 7. Defendant ANTHONY MORGAN is, and at all times mentioned in this complaint,
15 was a duly sworn peace officer employed by Defendants SAN LEANDRO POLICE DEPARTMENT
16 and CITY OF SAN LEANDRO as a police officer. This Defendant was, at all times mentioned in
17 this complaint, acting in the course and scope of his employment with the SAN LEANDRO POLICE
18 DEPARTMENT and CITY OF SAN LEANDRO. This Defendant was, at all times mentioned in this
19 complaint, acting under color of state law. This Defendant is sued in his individual capacity as well
20 as his official capacity.

21 8. Defendant SAN LEANDRO POLICE DEPARTMENT is, and at all times
22 mentioned in this complaint, was a duly constituted law enforcement agency that was created by and
23 functions under the control of the defendant CITY OF SAN LEANDRO.

24 9. Defendant CITY OF SAN LEANDRO is a political subdivision of the State of
25 California and exists under and by virtue of the laws of the State of California, and, at all relevant
26 times herein mentioned, employed Defendants JASON FLETCHER, ANTHONY MORGAN and
27 DOES 1 through 100, inclusive.

10. Plaintiff is ignorant of the true names and capacities of Defendant named herein as DOES 1 through 100, inclusive. Plaintiff is informed and believes and thereon alleges that each defendant herein, including each DOE defendant, was at all times relevant hereto the agent, servant, employee or representative of the remaining defendants and acted, at least in part, within the course and scope of such relationship. Plaintiff is further informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that plaintiff's damages as herein alleged were proximately caused by said fictitiously named defendants.

Factual Allegations

11. On or about February 11, 2007 at approximately 2:00 A.M., in the City of San Leandro, County of Alameda, State of California, Plaintiff was approached and detained by San Leandro Police Officers JASON FLETCHER and ANTHONY MORGAN. Plaintiff was walking in the parking lot of the Manor Bowl, located at 887 Manor Boulevard, in the City of San Leandro, California.

12. At said time and place, Defendant Officers FLETCHER and MORGAN, placed Plaintiff under arrest for public drunkenness and took Plaintiff into custody. Said Defendant Officers lacked probable cause to believe that Plaintiff had committed a public offense.

13. After placing Plaintiff in the rear of the police car, and before Plaintiff was booked at the jail, Defendants JASON FLETCHER and ANTHONY MORGAN and DOES 1 through 100, and each of them, assaulted, struck and beat Plaintiff in and about her face, arms, head and body causing bodily injury and damage to Plaintiff as hereinafter alleged.

14. In conducting themselves in the manner as alleged herein, Defendants JASON FLETCHER and ANTHONY MORGAN and DOES 1 through 100, and each of them, were acting under color of law and within the course and scope of their employment as police officers and in their capacities as sworn peace officers and agents of Defendants SAN LEANDRO POLICE DEPARTMENT and CITY OF SAN LEANDRO.

FIRST CLAIM FOR RELIEF
(Violation of Civil Rights—42 U.S.C. § 1983)

15. The allegations set forth in Paragraphs 1 through 14 are realleged and are incorporated herein by reference as though expressly set forth.

16. The hereinabove described actions and omissions, engaged in under color of law and state authority by the Defendants, and each of them, including Defendants SAN LEANDRO POLICE DEPARTMENT and CITY OF SAN LEANDRO which are responsible because of their authorization, condonation, and ratification thereof for the acts of its agents, deprived Plaintiff of rights secured to her by the Constitution of the United States, including but not limited to her Fourth Amendment right to be free from unreasonable searches and seizures by reason of Plaintiff's arrest without reasonable or probable cause.

17. Defendants, and each of them, further violated Plaintiff's right to be free from unreasonable searches and seizures by their use and application of unreasonable force in securing Plaintiff's arrest.

18. Defendants SAN LEANDRO POLICE DEPARTMENT and CITY OF SAN LEANDRO failed to supervise and/or properly train Defendants JASON FLETCHER and ANTHONY MORGAN and DOES 1 through 100, inclusive, and each of them, and through their lack of proper supervision and training, permitted these individuals to commit some or all of the acts complained of in the preceding Paragraphs.

19. The SAN LEANDRO POLICE DEPARTMENT is an agency of the CITY OF SAN LEANDRO and functions under the auspices, authority and imprimatur of the government of the CITY OF SAN LEANDRO. It is alleged that the acts and policies of the SAN LEANDRO POLICE DEPARTMENT are, in effect, the acts and policies of the CITY OF SAN LEANDRO.

20. As a direct and proximate result of actions of the defendants, and each of them, as described in this complaint, Plaintiff has suffered injury, loss, and/or damage in that she sustained contusions and bruises to her person at the time of her arrest. As a further direct and proximate result of the actions of the defendants, and each of them, Plaintiff was required to and did employ

1 physicians, therapists and health care providers for the treatment of her injuries and did incur medical
 2 expenses in an amount which is unknown to Plaintiff at this time. Plaintiff prays leave of the court
 3 to amend this complaint when the exact amount of these expenses becomes known to her.

4 21. As a further direct and proximate result of the actions of the defendants, and each of
 5 them, Plaintiff suffered extreme physical pain and discomfort, and mental and emotional suffering as
 6 a result of the injuries she sustained. Plaintiff further experienced anxiety and mental suffering as a
 7 result of being arrested for an offense she did not commit and at the prospect of the loss of her liberty
 8 if she were convicted and imprisoned on these false charges and accusations.

9 22. As a further direct and proximate result of the actions of the defendants, and each of
 10 them, Plaintiff was required to employ and hire attorneys, private investigators, and others. Plaintiff
 11 is presently unaware of the exact amount of these expenses at the present time, but prays leave of the
 12 court to amend this complaint when the exact amount of these expenses becomes known to her.

13 23. As a further direct and proximate result of the actions of the defendants, and each of
 14 them, Plaintiff suffered the loss of economic opportunity and loss of income in an amount which is
 15 unknown to Plaintiff at this time. Plaintiff prays leave of the court to amend this complaint when the
 16 exact amount of these losses becomes known to her.

17 24. In acting and conducting themselves, as is alleged in this complaint, Defendants
 18 JASON FLETCHER and ANTHONY MORGAN and DOES 1 through 100, inclusive, and each of
 19 them, and each of them, acted knowingly, willfully, and maliciously, and with reckless and callous
 20 disregard for plaintiff's federally protected rights. Plaintiff is therefore entitled to punitive or
 21 exemplary damages against these individual defendants according to proof.

22
 23 **SECOND CLAIM FOR RELIEF**
 24 **(Violation of State Civil and Statutory Rights–**
Calif. Const. Art. I § 13, Civ. Code §§ 43, 1708)

25 25. The allegations set forth in Paragraphs 1 through 14 are realleged and are
 26 incorporated herein by reference as though expressly set forth.

27 26. This Court has supplemental jurisdiction over this state claim and cause of action

1 herein alleged pursuant to 28 U.S.C. § 1367(a).

2 27. On February 11, 2007, Defendants JASON FLETCHER and ANTHONY MORGAN
3 and DOES 1 through 100, inclusive, and each of them, arrested Plaintiff without probable cause and
4 used unreasonable and excessive force in arresting Plaintiff, and in securing Plaintiff's custody. In
5 so doing, defendants, and each of them, violated of the rights guaranteed to plaintiff under Article I,
6 Section 13 of the California Constitution and in violation of plaintiff's civil rights under Sections 43
7 and 1708 of the California Civil Code.

8 28. As a further direct and proximate result of the actions of the defendants, and each of
9 them, plaintiff sustained injury and suffered damages as hereinabove alleged.

10 29. In acting as is alleged in this complaint, defendant individually named police
11 officers, acted knowingly, willfully, and maliciously, and with reckless and callous disregard for
12 plaintiff's rights as guaranteed by California law. Plaintiff is therefore entitled to punitive or
13 exemplary damages according to proof against these individually named police officers.

14 30. On or about May 18, 2007, Plaintiff presented a claim to the City of San Leandro by
15 presenting said claim to the Clerk of the City of San Leandro for the injuries, disability, losses and
16 damages suffered and incurred by her by reason of the above-described occurrence and occurrences,
17 all in compliance with the requirements of California Government Code, Section 905. A copy of the
18 claim is attached hereto as Exhibit "A" and made a part hereof.

19 31. On or about May 21, 2007, the City of San Leandro rejected the Plaintiff's claim. A
20 copy of said rejection is attached hereto as Exhibit "B" and made a part hereof.

21 WHEREFORE, plaintiff prays judgment against all defendants, and each of them, as follows:

22 1. For compensatory damages, in an amount to be determined according to proof at
23 trial;

24 2. For punitive damages against the individually named police officers in an amount to
25 be determined according to proof at trial;

26 3. For reasonable attorney's fees, pursuant to 42 U.S.C. § 1988 and California Civil
27 Code, Section 50;

1 4. For costs of suit incurred in this action; and

2 5. For such other and further relief as the Court deems proper.

3 Dated: May 25, 2007.

4 Respectfully submitted,

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6 /s/ J. Patrick Heron

7 J. PATRICK HERON
8 Attorney for Plaintiff
 LYDIA PACHECO-CESENA

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff LYDIA PACHECO-CESENA hereby demands a jury trial.

11 Dated: May 25, 2007.

12 Respectfully submitted,

13
14 /s/ J. Patrick Heron

15 J. PATRICK HERON
16 Attorney for Plaintiff
 LYDIA PACHECO-CESENA